

Applicant : J. Stuart Cumming
Appl. No. : 09/740,679
Examiner : Eduardo C. Robert
Docket No. : 13533.4033

Remarks

This is in response to the Office Action of November 29, 2004 and the Advisory Action of June 21, 2005. Favorable reconsideration is requested.

As requested by the Examiner, the present amended claims are based on the set mailed August 10, 2004.

A Petition to Revive is filed herewith. A Petition to Make Special, and a Declaration by the inventor are filed herewith.

A Terminal Disclaimer was previously filed to overcome the double patenting rejection. As a result, clearly Claims 104 and 106 are allowable as indicated in the Office Action of November 29, 2004.

Furthermore, Claims 53-102 and 105 which the Examiner contends are withdrawn should now be allowable because each of independent Claims 53, 80, 88, 90 and 105 is generic to the elected species of Figure 18 as are allowed Claims 106 and 104. In the response filed October 11, 2002, it was stated that various independent and dependent claims read on the elected species. Also, the lenses shown in Figures 16-20 are identical to lens 32 of Figures 1 through 8 except for the knobs 118.

In the Office Action of November 29, 2004, the Examiner contended that the addition of "refractive" optic "to function as a single optic" "appears to be new matter." It is respectfully submitted that it is not new matter; however, the reference "to function as a single optic" has been omitted from the subject claims. These claims have been amended to refer to a "single solid flexible refractive optic" and to omit the previous insertion of "to function as a single optic." The intent of the earlier amendment was to make it clear that the claims are directed to a single optic as distinguished from plural optics such as disclosed in Portnoy. Furthermore,

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it is clear from the embodiment of Figure 18 that a single optic is involved.

With regard to the Examiner's concern with the word "refractive," it is abundantly clear that the lenses of this application clearly are refractive as distinguished from a reflective or Fresnel. Figures 18 and 17 clearly show solid lenses, and clearly must be refractive to work in the eye as the eye is shown in the other Figures. It could not work any other way. Also, as the Examiner points out, the present lens is to "correct a refractive error in the eye." Also, the materials described on page 32, line 12, etc., are solid and obviously refractive since they are solid and the optic has curvature to thus have power. The lens is referred to on page 33, line 10 as resilient semi-rigid material, and on page 33, line 26 as hard material. Furthermore, Figures 54 – 57 show refraction by the rays shown and which are bent, resulting from refraction.

A refractive error is corrected with a refractive lens. The reference to "solid" is used to better define over an inflatable lens such as in Kalb's '457. Clearly, Figure 18 shows a solid refractive optic, and the application discloses a flexible optic.

Finally, additional Claims 107 – 124 are added herewith and which read on the elected species.

Favorable reconsideration and a Notice of Allowance is earnestly solicited.

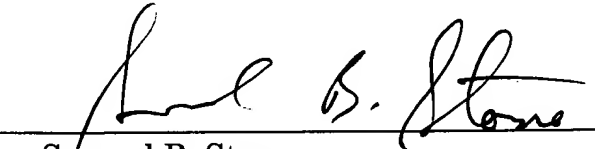
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The Commissioner is authorized to charge any fee which may be required in connection with this Amendment to deposit account No. 15-0665.

Respectfully submitted,

ORRICK, HERRINGTON & SUTCLIFFE LLP

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